

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JERRY MASON,	:	CIVIL NO. 1:00-CV-1490
	:	
Petitioner	:	(Judge Rambo)
	:	
v.	:	(Magistrate Judge Smyser)
	:	
ROBERT W. MEYERS,	:	
Superintendent,	:	
	:	
Respondent	:	

FILED
HARRISBURG, PA

DEC 22 2000

ORDER

MARY E. D'ANDREA, CLERK
Per *[Signature]*
Deputy Clerk

On August 21, 2000, the petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner raises the following claims: 1) actual innocence based upon DNA evidence; 2) ineffective assistance of counsel; 3) conflict of interest of counsel; and 4) failure to conduct investigation or attack legal jurisdiction of this case. By an Order dated October 10, 2000, the respondent was ordered to respond to the petition on or before October 30, 2000.

The respondent did not respond to the petition as ordered. By an Order dated November 9, 2000, the respondent was order to, within ten days, show cause why a default judgment should not be entered against him and the petition for a writ of habeas corpus be granted and/or other sanctions entered against him based on his failure to obey the Order of October 10, 2000. On November 14, 2000, the respondent filed a response to the show cause order and a request for an extension of time to file his response to the petition. By an Order dated November 22, 2000, we granted the respondent an extension of time until December 1, 2000, to respond to the petition.

On December 1, 2000, the respondent filed a response to the petition.

On December 13, 2000, the petitioner filed a motion for entry of default and sanctions against the respondent for failing to respond to the petition. The petitioner claims that he did not receive a copy of the respondent's December 1, 2000, response to the petition. The respondent's response to the

petition contains an undated certificate of service. However, the address on the certificate of service to which the petitioner's copy was allegedly sent does not contain the petitioner's inmate identification number. Thus, it is possible that the petitioner did not receive the respondent's response. To avoid delay, we will order that the Clerk of Court send to the petitioner a copy of the respondent's response (doc. 15) to the petition. We will deny the petitioner's motion for entry of default and sanctions against the respondent.

The Order of October 10, 2000, provided that the respondents:

shall respond to the petition for writ of habeas corpus in the manner required by Rule 5, 28 U.S.C.A. foll. §2254:

The answer shall respond to the allegations of the petition. In addition it shall state whether the petitioner has exhausted his state remedies including any post-conviction remedies available to him under the statutes or procedural rules of the state and including also his right of appeal both from the judgment of conviction and from any adverse judgment or order in the post-conviction proceeding. The answer shall indicate

what transcripts (of pretrial, trial, sentencing, and post-conviction proceedings) are available, when they can be furnished, and also what proceedings have been recorded and not transcribed. There shall be attached to the answer such portions of the transcripts as the answering party deems relevant. The court on its own motion or upon request of the petitioner may order that further portions of the existing transcripts be furnished or that certain portions of the nontranscribed proceedings be transcribed and furnished. If a transcript is neither available nor procurable, a narrative summary of the evidence may be submitted. If the petitioner appealed from the judgment of conviction or from an adverse judgment or order in a post-conviction proceeding, a copy of the petitioner's brief on appeal and of the opinion of the appellate court, if any, shall also be filed by the respondent with the answer.

The respondent's December 1, 2000 response to the petition does not comply with the Order of October 10, 2000. The response does not state the respondent's position on whether or not the petitioner has exhausted state remedies. The respondent will be ordered to file a supplemental response stating his position on the question whether the petitioner has

exhausted his state remedies and his position on the petitioner's assertion that exhaustion of state remedies should be excused because of inordinate delay in the state court. The respondent should attach to his supplemental response all motions, briefs and orders filed in the state courts concerning the petitioner's direct appeal of his conviction and his petition for post-conviction collateral relief.

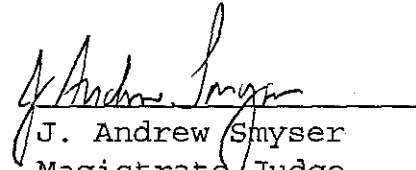
The respondent shall serve his supplemental response on the petitioner at the following address:

Jerry Mason
BK-6012
SCI-Rockview
P.O. Box A
Bellefonte, PA 16823

The petitioner may file a reply to the respondent's response and supplemental response within ten days of the date the supplemental response is served on him.

AND NOW, this day of December, 2000, **IT IS HEREBY ORDERED** that the petitioner's motion (doc. 16) for entry of default and sanctions against the respondent is **DENIED**. The

Clerk of Court is directed to send a copy of the respondent's response (doc. 15) to the petitioner at the address on file for the petitioner. **IT IS FURTHER ORDERED** that the respondent shall file a supplemental response to the petition within fifteen days of the date of this Order and that the petitioner may file a reply within ten days of the date he is served with the supplemental response.


J. Andrew Smyser
Magistrate Judge

Dated: December 22, 2000.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

December 22, 2000

Re: 1:00-cv-01490 Mason v. Meyers

True and correct copies of the attached were mailed by the clerk
to the following:

Jerry Mason With copy of doc #15
SCI-R
SCI at Rockview
BK-6012
P.O. Box A
Bellefonte, PA 16823

David W. Lupas, Esq.
225 Wyoming Ave
West Pittston, PA 18643

Frank P. Barletta, Esq.
District Attorney's Office
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711

David W. Lupas
Luzerne County Courthouse
Wilkes Barre, PA 18711

cc:

Judge	()
Magistrate Judge	(X) Smyser
U.S. Marshal	()
Probation	()
U.S. Attorney	()
Atty. for Deft.	()
Defendant	()
Warden	()
Bureau of Prisons	()
Ct Reporter	()
Ctroom Deputy	()
Orig-Security	()
Federal Public Defender	()
Summons Issued	()

with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()

Standard Order 93-5 ()
Order to Show Cause () with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other _____ ()

MARY E. D'ANDREA, Clerk

DATE: December 22nd, 2000

BY:


Deputy Clerk